

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/08/2021 7:58:39 AM AWST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	WAD177/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v HOLISTA COLLTECH ACN 094 515 992 & ANOR
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 4/08/2021 9:28:32 AM AWST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

Federal Court of Australia

No WAD

of 2021

District Registry: Western Australia

Division: General

IN THE MATTER OF HOLISTA COLLTECH LTD

ACN: 094 515 992

Australian Securities and Investments Commission

Plaintiff

and

Holista Colltech Ltd (ACN 094 515 992)

First Defendant

Dr Rajendran Marnickavasagar

Second Defendant

A. DETAILS OF APPLICATION

This application is made under ss 180(1), 206C(1), 674(2), 1041H(1), 1309(2), 1309(12), 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 21, 23 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**).

The Plaintiff seeks declarations of contraventions of the Corporations Act, pecuniary penalty orders, a disqualification order and costs.

Terms defined in the Concise Statement dated 4 August 2021 (**Concise Statement**) have the same meaning in the Originating Process.

On the facts stated in the Concise Statement filed in these proceedings and served with this originating process, ASIC claims:

Filed on behalf of (name & role of party)	Australian Securities & Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Ingrid McCormick, Litigation Counsel		
Law firm (if applicable)			
Tel	0481 400 447	Fax	(08) 9261 4227
Email	ingrid.mccormick@asic.gov.au		
Address for service (include state and postcode)	Level 1, 11 Mounts Bay Road, Perth WA 6000 Attention: Ingrid McCormick		



Relief against Holista

1. A declaration pursuant to s 1317E of the Corporations Act, or in the alternative s 21 of the FCA, that Holista contravened s 674(2) of the Corporations Act by failing to notify the ASX of the following information (both individually and collectively):
 - (a) between 9 April 2020 and 25 May 2020, prior to the commencement of the *Corporations (Coronavirus Economic Response) Determination (No. 2) 2020 (Cth) (Coronavirus Determination)*, the Placed Orders Information;
 - (b) between 9 April 2020 and 25 May 2020, and further and in the alternative between at least 22 April 2020 and until 25 May 2020, prior to the commencement of the Coronavirus Determination, the Orders Shortfall Information; and
 - (c) between 9 April 2020 and 25 May 2020, and further and in the alternative between at least 22 April 2020 and until 25 May 2020, prior to the commencement of the Coronavirus Determination, the Revenue Shortfall Information,in circumstances where:
 - (d) ASX Listing Rule 3.1 required that each of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information be disclosed to the ASX;
 - (e) in each case, Holista was aware of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information;
 - (f) each of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information was not generally available; and
 - (g) each of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of shares in Holista.
2. A declaration pursuant to s 1317E of the Corporations Act, or in the alternative s 21 of the FCA, that Holista contravened s 674(2) of the Corporations Act during the period between 26 May 2020 and 9 July 2020, on and from the commencement of the Coronavirus Determination, by failing to notify the ASX (both individually and collectively) of:
 - (a) the Placed Orders Information;



- (b) the Orders Shortfall Information; and
- (c) the Revenue Shortfall Information,

in circumstances where:

- (d) ASX Listing Rule 3.1 required that each of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information be disclosed to the ASX;
 - (e) in each case, Holista was aware of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information;
 - (f) each of the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information was not generally available; and
 - (g) Holista knew that or alternatively was reckless or negligent with respect to whether the Placed Orders Information, the Orders Shortfall Information and the Revenue Shortfall Information would, if it were generally available, have a material effect on the price or value of shares of shares in Holista.
3. A declaration that the contraventions referred to in paragraphs 1 and 2 were serious within the meaning of s 1317G(1)(c)(iii) of the Corporations Act.
4. A declaration pursuant to s 21 of the FCA that, by:
- (a) making the YouTube Representation;
 - (b) making the Orders Representation; and/or
 - (c) making the Revenue Representation,
- Holista, in this jurisdiction, engaged in conduct, in relation to a financial product or a financial service, that was misleading or deceptive or was likely to mislead or deceive, in contravention of s 1041H(1) of the Corporations Act.
5. An order pursuant to s 1317G(1) of the Corporations Act that Holista pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court thinks appropriate in respect of each of the declared contraventions of s 674(2) of the Corporations Act.
6. An order that Holista pay ASIC's costs.



Relief against Dr Marnickavasagar

7. A declaration under s 1317E of the Corporations Act, or in the alternative s 21 of the FCA, that from 7 February 2020, Dr Marnickavasagar contravened s 180(1) of the Corporations Act in that he failed to discharge his duties to Holista with the degree of care and diligence that a reasonable person would exercise, if he or she were the Managing Director and CEO of a corporation in Holista's circumstances and occupied the offices held by Dr Marnickavasagar, and had the same responsibilities within Holista, by failing to take all necessary steps to:
- (a) ensure that any representation made by him on behalf of Holista was not misleading or deceptive or likely to mislead or deceive;
 - (b) ensure that any announcement or other document he approved for submission to the ASX was not misleading or deceptive or likely to mislead or deceive; and
 - (c) qualify, withdraw or correct any existing announcement or document made to the ASX so that it was not misleading or deceptive or likely to mislead or deceive,
- thereby causing or otherwise permitting Holista to contravene each or all of the following provisions:
- (d) s 674(2) of the Corporations Act, and/or
 - (e) s 1041H of the Corporations Act,
- and exposing Holista to the risk of legal proceedings, including declarations of contravention and civil pecuniary penalties.
8. A declaration under s 1317E of the Corporations Act that the contraventions in paragraph 7 were serious within the meaning of s 1317G(1)(c)(iii) of the Corporations Act.
9. A declaration of contravention under s 1317E of the Corporations Act, or in the alternative s 21 of the FCA, that Dr Marnickavasagar contravened s 1309(2)/(12) of the Corporations Act in making available or giving, or alternatively authorising or permitting the making available or giving of:
- (a) a letter dated 17 April 2020 to the ASX, in which Holista represented that a Binding Term Sheet was executed between Holista and GICC on 20 February 2020 at around 1.47 pm;



- (b) a letter dated 20 April 2020 to the ASX and to members of Holista, in which Holista represented that a Binding Term Sheet was executed between Holista and GICC on 20 February 2020 at around 1.47 pm; and
- (c) an ASX announcement dated 9 April 2020 to the ASX and to members of Holista, containing the Orders Representation and the Revenue Representation,

which was information that related to the affairs of Holista and that was false or misleading in a material particular without having taken reasonable steps to ensure that the information was not false or misleading in a material particular.

10. An order pursuant to s 1317G(1) of the Corporations Act that Dr Marnickavasagar pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of s 180(1) and s 1309(2)/(12) of the Corporations Act.
11. An order pursuant to s 206C(1) of the Corporations Act that Dr Marnickavasagar be disqualified from managing a corporation for such period as the Court thinks fit.
12. An order that Dr Marnickavasagar pay ASIC's costs.
13. Such further or other orders as the Court considers appropriate.

Date: 4 August 2021

.....
Ingrid McCormick

Solicitor for the Australian Securities and Investments Commission

This application will be heard by _____ at the Federal Court of Australia at Peter Durack
Commonwealth Law Courts Building, 1 Victoria Avenue, Perth, Western Australia
at _____ am/pm on _____ 2021.

B. NOTICE TO THE DEFENDANTS

TO: Holista Colltech Ltd (ACN 094 515 992)
AT: Level 5, 126 Phillip Street, Sydney NSW 2000



TO: Dr Rajendran Marnickavasagar

AT: No 10, Jalan Ss1/41 Kampung Tunku 47300 Petaling Jaya Selango, Malaysia

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: August 2021

.....
By the Court

This originating process is filed by Ingrid McCormick for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Australian Securities and Investments Commission
Level 1, 11 Mounts Bay Road
PERTH WA 6000

It is intended to serve a copy of this originating process on the defendants.